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10 *Attorneys for Defendants SharkNinja Sales Company,*  
11 *SharkNinja Management Company, SharkNinja*  
12 *Management LLC, and SharkNinja Operating LLC*

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 WENDY GREER, an individual;

16 Plaintiff

17 v.

18 KOHL'S INC., a foreign corporation;  
19 SHARKNINJA SALES COMPANY, a foreign  
20 corporation; SHARKNINJA MANAGEMENT  
21 COMPANY, a foreign corporation;  
22 SHARKNINJA MANAGEMENT LLC., a  
23 foreign corporation; SHARKNINJA  
24 OPERATION LLC., a foreign corporation DOE  
25 EMPLOYEE; DOES I through X, inclusive; and  
26 DOE BUSINESS ENTITIES I through X,  
27 inclusive,

28 Defendants.

**CASE NO. 2:23-cv-00871-JCM-NJK**

**~~PROPOSED~~ STIPULATED PROTECTIVE  
ORDER**

**AS AMENDED**

**~~PROPOSED~~ STIPULATED PROTECTIVE ORDER**

23 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Plaintiff Wendy Greer  
24 ("Plaintiff"), Defendant Kohl's Inc, and Defendants SharkNinja Management LLC, SharkNinja  
25 Operating LLC, SharkNinja Sales Company, and SharkNinja Management Company (collectively  
26 "SharkNinja") hereby request the Court enter the following Stipulated Sharing and Non-sharing  
27 Protective Order ("Order"). Disclosure and discovery in this matter may involve production of  
28 confidential, commercial and/or proprietary documents and information. In order to preserve and

1 maintain the confidentiality of certain confidential, commercial and/or proprietary documents and  
2 information produced or to be produced by SharkNinja or by any party in this action, it is hereby  
3 **STIPULATED** and **ORDERED** that:

4 1. Documents or information to be produced or provided by SharkNinja or any party  
5 in this litigation that contain confidential, commercially sensitive, private personal information  
6 and/or proprietary information may be designated as confidential by marking or placing the  
7 applicable notice “Subject to Non-Sharing Protective Order,” “Subject to Protective Order,” or  
8 “Confidential,” or substantially similar language on media containing the documents, on the  
9 document itself, or on a copy of the document, in such a way that it does not obscure the text or  
10 other content of the document.

11 2. As used in this Order, the terms “documents” or “information” mean all written  
12 material, electronic data, videotapes and all other tangible items, produced in whatever format (e.g.,  
13 hard copy, electronic, digital, etc.) and on whatever media (e.g., hard copy, videotape, computer  
14 diskette, CD-ROM, DVD, by secure electronic transmission, hard drive or otherwise). Further, the  
15 terms shall have the full meaning ascribed to them by the Federal Rules of Civil Procedure.

16 3. Documents or information designated as “Subject to Non-Sharing Protective  
17 Order,” “Subject to Protective Order,” or “Confidential” or substantially similar language in  
18 accordance with the provisions of this Order (“Protected Documents” or “Protected Information”)  
19 shall only be used, shown or disclosed as provided in this Order. However, nothing in this Order  
20 shall limit a party’s use or disclosure of his or her own information designated as a Protected  
21 Document or Protected Information.

22 4. If a receiving party disagrees with the “Protected” designation of any document or  
23 information, the Challenging Party shall initiate the dispute resolution process by providing written  
24 notice of each designation it is challenging and describing the basis for each challenge. The Parties  
25 shall attempt to resolve each challenge in good faith and must confer within 10 days of the date of  
26 service of notice. In conferring, the Challenging Party must explain the basis for its belief that the  
27 confidentiality designation was not proper and must give the Designating Party an opportunity to  
28 review the designated material, to reconsider the circumstances, and, if no change in designation is

1 offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the  
2 next stage of the challenge process only if it has engaged in this meet and confer process first or  
3 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
4 a timely manner.

5 5. Protected Documents and any copies thereof shall be maintained confidential by the  
6 persons authorized to receive the documents pursuant to paragraph 6 and shall be used only for  
7 prosecuting, defending, or attempting to settle this litigation, subject to the limitations set forth  
8 herein.

9 6. Protected Documents shall be disclosed only to “Qualified Persons.” Qualified  
10 Persons are limited to:

- 11 a. Counsel of Record for the parties, and the parties;
- 12 b. Attorneys, paralegals and staff employed by Counsel of Record’s firm and  
13 involved in the preparation and trial of this action;
- 14 c. A vendor hired by a party to host data and maintain a database of electronic  
15 data or perform other work related to the collection, review or production of documents in  
16 the case;
- 17 d. Experts and non-attorney consultants retained by the parties for the  
18 preparation and/or trial of this case, provided that no disclosure shall be made to any expert  
19 or consultant who is employed by a competitor of SharkNinja;
- 20 e. Any deponent may be shown or examined on any information, document or  
21 thing designated Confidential if it appears that the witness authored or received a copy of  
22 it, the witness was involved in the subject matter described therein or the witness is  
23 employed by the party who produced the information, document or thing, or if the producing  
24 party consents to such disclosure, which consent cannot be unreasonably withheld;
- 25 f. The Court, the Court’s staff, witnesses, and the jury in this case;
- 26 g. Any mediator, special master or other third parties (collectively,  
27 “Mediators”) appointed by the Court or retained by the parties for settlement purposes or  
28 resolution of discovery or other disputes and their staff; and

1           h. With respect to documents designated as “Sharing” or “Subject to Protective  
2 Order,” attorneys representing plaintiff(s) and the experts and non-attorney consultants  
3 retained by such attorneys, in other cases pending against SharkNinja involving grills with  
4 claims that they or their packaging are defective, provided no disclosure shall be made to  
5 any expert or consultant who is employed by a competitor of SharkNinja.

6           7. The receiving party must make reasonable efforts to ensure the individuals described  
7 in paragraphs 6(b), 6(c), 6(d), 6(e), 6(g), and 6(h) above are Qualified Persons.

8           8. Before receiving access to any Protected Document or the information contained  
9 therein, each person described in paragraphs 6(d) and 6(h) above shall execute a “Written  
10 Assurance” in the form contained in Exhibit A, attached hereto. The receiving party shall retain  
11 each such executed Written Assurance. Each such executed Written Assurance shall be submitted  
12 to counsel for SharkNinja upon order of the Court requiring production. However, for consulting  
13 experts who were not designated as testifying experts, the receiving party may redact the name,  
14 address, and signature of the consultant before disclosing the executed Exhibit A.

15           9. As the Protected Documents may only be distributed to Qualified Persons, Qualified  
16 Persons may not post Protected Documents on any website or internet accessible document  
17 repository, excepting a vendor hosted review platform for the sole purpose of reviewing the  
18 information for the subject case and not for any other purpose, and shall not under any circumstance  
19 sell, offer for sale, advertise, or publicize either the Protected Documents and the Confidential  
20 information contained therein or the fact that such persons have obtained SharkNinja’s (or the  
21 producing party’s) Protected Documents and confidential information.

22           10. To the extent that Protected Documents or information obtained therefrom are used  
23 in the taking of depositions (including exhibits) or other pretrial testimony and/or used as exhibits  
24 at trial, such documents or information shall remain subject to the provisions of this Order, along  
25 with the transcript pages of the deposition testimony and/or trial testimony dealing with, referring  
26 to or referencing the Protected Documents or information. Designation of the portion of the  
27 transcript (including exhibits) which contains references to Protected Documents or information  
28 shall be made (i) by a statement to such effect on the record during the proceeding in which the

Nonetheless, the Court may, in appropriate circumstances, order disclosure of information designated as confidential.

1 testimony is received, or (ii) by written notice served on counsel of record in this Litigation within  
 2 thirty (30) business days after the receipt of the draft or final transcript (whichever is received  
 3 earlier) of such proceeding (as used herein, the term “draft transcript” does not include an ASCII  
 4 or rough transcript). However, before such thirty (30) day period expires, all testimony, exhibits  
 5 and transcripts of depositions or other testimony shall be treated as Protected Documents. All  
 6 portions of transcripts not designed as Confidential within the time frame provided herein shall be  
 7 deemed not confidential.

8 11. If any party disagrees with the designation of all or part of a deposition transcript  
 9 designated as “Protected” pursuant to Paragraph 10 above, the Challenging Party shall initiate the  
 10 dispute resolution process by providing written notice of each designation it is challenging and  
 11 describing the basis for each challenge. The Parties shall attempt to resolve each challenge in good  
 12 faith and must confer within 10 days of the date of service of notice. In conferring, the Challenging  
 13 Party must explain the basis for its belief that the confidentiality designation was not proper and  
 14 must give the Designating Party an opportunity to review the designated material, to reconsider the  
 15 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
 16 designation. A Challenging Party may proceed to the next stage of the challenge process only if it  
 17 has engaged in this meet and confer process first or establishes that the Designating Party is  
 18 unwilling to participate in the meet and confer process in a timely manner. If the parties are unable  
 19 to resolve the issue of confidentiality regarding the challenged deposition testimony, the designated  
 20 deposition testimony at issue, and any related exhibits, will continue to be treated as a Protected  
 21 Document, in accord with its respective designation, pending determination by the Court as to the  
 22 confidential status.

23 ~~12. In the event that any receiving party desires that any Confidential materials be~~  
 See order issued ~~with, or the contents thereof be in any way disclosed, in any hearing, pleading, motion or~~  
 concurrently herewith ~~per filed with the Clerk of this Court, in connection with a motion or otherwise, documents,~~  
 25 ~~depositions or other discovery materials that have been marked “CONFIDENTIAL” or to file any~~  
 26 ~~document which quotes or substantially summarizes the substance of such Confidential material,~~  
 27 ~~shall do so by filing the documents or pleadings under seal according to Local Rule 10-5. Any~~  
 28

~~motion to seal or otherwise restrict access shall be filed by the party who marked the documents~~  
~~CONFIDENTIAL in accordance with Local Rule 10-5. Confidential material shall not include any~~  
~~documents, depositions or other discovery materials which: (a) were determined by this Court to~~  
~~have been improperly designated as Confidential material under this Agreement; (b) have~~  
~~previously been filed in this case and are in the public Court file not under seal; or (c) are otherwise~~  
~~outside the protection of this Agreement.~~

13. To the extent SharkNinja (or the producing party) is requested to produce documents it has determined should not be subject to the sharing provision of this Order in paragraph 6(h), SharkNinja (or the producing party) will designate such documents as "Non-Sharing." Documents designated as "Non-Sharing" shall not be shared under paragraph 6(h).

14. With respect to Protected Documents designated as "Non-Sharing," within one hundred and twenty (120) days after the conclusion of this case, counsel for the parties who received Protected Documents, including any documents that any such party disclosed to any person described in paragraph 6(b) or (c) shall securely destroy the Protected Documents and certify such destruction to SharkNinja (or the producing party) within one hundred and fifty (150) days after the conclusion of this case.

15. With respect to documents designated as "Sharing" or "Subject to Protective Order," Counsel for the parties shall not be required to return the Protected Documents to SharkNinja (or the producing party) after the conclusion of this case and may retain the documents pursuant to the terms of this Order.

16. Inadvertent or unintentional production of documents or information containing confidential information that should have been designated as Protected Document(s) shall not be deemed a waiver in whole or in part of the party's claims of confidentiality.

17. The parties may disclose and produce responsive documents to each other in this litigation, and seek to do so without risking waiver of any attorney-client privilege, work product or other applicable privilege or protection. As such, the parties will adhere to the following

procedures with regard to the production of privileged or protected material, should that occur:

By allowing the non-sharing provision, the Court has not ruled that the sharing of such discovery will be forever precluded. Instead, "collateral litigants desiring any discovery produced pursuant to [this provision] have to go through the appropriate steps to obtain that discovery." *Kelly v. Provident Life & Accident Ins. Co.*, 2008 WL 5132851, at \*3 (S.D. Cal. Dec. 5, 2008) (discussing *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003)).



1           a.     The production of documents (including both paper documents and  
2 electronically stored information or “ESI”) subject to protection by the attorney-client  
3 and/or work product doctrine or by another legal privilege protecting information from  
4 discovery, shall not constitute a waiver of any privilege or other protection, provided that  
5 the producing party notifies the receiving party, in writing, of the production within 14 days  
6 after its discovery of the same.

7           b.     If the producing party notifies the receiving party within 14 days after  
8 discovery that privileged materials (hereinafter referred to as the “Identified Materials”)  
9 have been produced, the Identified Materials and all copies of those materials shall be  
10 returned to the producing party or destroyed or deleted, on request of the producing party.  
11 The producing party will provide a privilege log providing information upon request or if  
12 required by the Federal Rules of Civil Procedure and applicable case law to the receiving  
13 party at the time the producing party provides the receiving party notice of the Identified  
14 Materials. If the receiving party has any notes or other work product reflecting the contents  
15 of the Identified Materials, the receiving party will not review or use those materials unless  
16 a court later designates the Identified Materials as not privileged or protected.

17           c.     This Stipulation and Order does not preclude a Party from intentionally  
18 waiving any claims of privilege or protection.

19           d.     The receiving party shall upon notice of the Identified Materials, (i)  
20 immediately cease the review and use of the disclosed document or information, except to  
21 the extent necessary to determine and/or contest the privilege or protection; (ii) if the  
22 receiving party does not challenge the assertion, return, sequester, or destroy the disclosed  
23 document or information forthwith, as well as any and all copies thereof; and (iii) if the  
24 receiving party does not challenge the assertion, destroy or sequester any references to the  
25 erroneously or inadvertently disclosed document or its contents, to the extent such  
26 references exist in other materials prepared by the producing party.

27           e.     The contents of the Identified Materials shall not be disclosed to anyone who  
28 was not already aware of the contents of them before the notice was made. The receiving

1 party must take reasonable steps to retrieve the Identified Materials if the receiving party  
2 disclosed the Identified Materials before being notified.

3 f. If any receiving party is in receipt of a document from a producing party  
4 which the receiving party has reason to believe is privileged, the receiving party shall in  
5 good faith take reasonable steps to promptly notify the producing party of the production of  
6 that document so that the producing party may make a determination of whether it wishes  
7 to have the documents returned or destroyed pursuant to this Stipulation and Order.

8 g. The party returning the Identified Materials may move the Court for an order  
9 compelling production of some or all of the Identified Material returned or destroyed.

10 h. Pursuant to Rule 502(d) of the Federal Rules of Evidence, the disclosure of  
11 Identified Materials in this action is not a waiver of the attorney-client privilege, work  
12 product doctrine or any other asserted privilege in any other federal or state proceeding.

13 i. Notwithstanding the foregoing, the Parties agree that any document used by  
14 any Party in a deposition, expert report, or court filing in this action that a producing party  
15 does not claw back within 7 calendar days of its use, ("Used Document") shall not be  
16 eligible for clawback of that document under this Stipulated Protective Order. Such  
17 ineligibility for clawback of that document under this Stipulated Protective Order shall not  
18 result in a subject matter waiver in any other state or federal proceeding. The producing  
19 party reserves its rights to utilize FRE 502(b) and the receiving party reserves its rights  
20 under FRE 502(b), including but not limited to establishing whether and to what extent a  
21 court order recognizing waiver of privilege under FRE 502(b) with respect to a document  
22 effects a subject matter waiver.

23 18. No provision of this Order shall constitute a concession by any party that any  
24 documents are subject to protection by the attorney-client privilege, the work product doctrine or  
25 any other potentially applicable privilege or doctrine. No provision of this stipulated order is  
26 intended to waive or limit in any way either party's right to contest any privilege claims that may  
27 be asserted with respect to any of the documents produced except to the extent set forth herein.  
28



1           19.     In the event that a party produces a document without a confidentiality designation  
2 as permitted by this Order, the following procedures shall apply:

3           a.     The producing party shall, within fourteen (14) days of the discovery of the  
4 disclosure, notify the other party in writing. The party receiving such notice shall promptly  
5 destroy the document, including any copies it has, or return the document on request of the  
6 producing party. Within ten (10) days after such document is returned or its destruction  
7 certified, the producing party will produce a new version of any such document that was  
8 returned or destroyed, which will contain the appropriate confidentiality designation.

9           b.     If the receiving party disputes the producing party's claim of confidentiality,  
10 that party may move the Court to challenge the confidential designation in accordance with  
11 Paragraph 4 of this Order. If the receiving party elects to file such a motion, the receiving  
12 party may retain possession of the document, but shall treat it in accordance with the terms  
13 of the Protective Order pending resolution of the motion. If the receiving party's motion is  
14 denied, the parties shall promptly comply with Paragraph 19(a) of this Order.

15           c.     The production of such document does not constitute a waiver of any claim  
16 of confidentiality as set forth in this order or any other matter in any other jurisdiction,  
17 unless otherwise ordered by the Court.

18           20.     This Order may not be waived, modified, abandoned or terminated, in whole or part,  
19 except by an instrument in writing signed by the parties. If any provision of this Order shall be held  
20 invalid for any reason whatsoever, the remaining provisions shall not be affected thereby.

21           21.     After termination of this litigation, the provisions of this Order shall continue to be  
22 binding.

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22. This Order shall be binding upon the parties hereto, upon their attorneys, and upon the parties' and their attorneys' successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, independent contractors, or other persons or organizations over which they have control

Dated: July 20, 2023.

**SO STIPULATED:**

**EVANS FEARS SCHUTTERT  
MCNULTY MICKUS**

/s/ Chad R. Fears

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**IT IS SO ORDERED**

  
**UNITED STATES MAGISTRATE JUDGE**

**DATED:** July 21, 2023